

**IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
MIDLAND DIVISION**

**JOHNNY GIVENS,
Plaintiff,**

vs.

**THE CHARTER OAK FIRE
INSURANCE COMPANY,
Defendant.**

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CASE NO. 7:20-CV-00234

**THE CHARTER OAK FIRE INSURANCE COMPANY'S
NOTICE OF REMOVAL**

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1441 and 1446, The Charter Oak Fire Insurance Company ("Defendant") hereby removes the above-captioned action to this Court from Cause No. A-20-09-0925-CV in the 70th District Court of Ector County, Texas. This Court has original jurisdiction under 28 U.S.C. § 1332.

GROUND FOR REMOVAL

DIVERSITY

1. This case is removable under 28 U.S.C. §§ 1332(a) and 1441(a) because this is a civil action in which Plaintiff filed suit seeking the recovery of alleged damages for underinsured motorist coverage related to alleged personal injury damages and, at this time, original jurisdiction exists because the amount in controversy exceeds \$75,000.00, exclusive of interest and costs, and there is complete diversity between Plaintiff and Defendant in this action. Plaintiff, Johnny Givens, is a citizen of Ector County, Texas. (See Exhibit 1) Defendant is a citizen of Connecticut, the state of its incorporation and its principal place of business. Accordingly, Plaintiff and Defendant have complete diversity of citizenship.

AMOUNT IN CONTROVERSY

2. Plaintiff alleges that he seeks an amount in excess of \$200,000.00 but less than \$1,000,000.00.

3. Defendant denies any liability to Plaintiff, but for removal purposes, the amount in controversy based on Plaintiff's alleged damages exceeds the \$75,000.00 threshold required for federal diversity jurisdiction.

NOTICE OF REMOVAL IS TIMELY

4. Plaintiff's Original Petition was served on September 8, 2020. This notice of removal is filed within 30 days of receipt of the Original Petition and is therefore timely under 28 U.S.C. § 1446(b).

REMOVAL AND OTHER DOCUMENTS

5. Pursuant to 28 U.S.C. § 1446(a), Defendant attaches to this notice the following papers, which are all of the process, pleadings, and orders served on it prior to removal of this action:

- a. Plaintiff's Original Petition, attached hereto as Attachment 1.
- b. Notice of Service of Process, attached hereto as Attachment 2.
- c. Defendant's Original Answer, attached here to as Attachment 3.

6. Undersigned counsel certifies that there were no motions pending and no hearings set as of the date of this Notice of Removal.

NOTICE TO PLAINTIFF AND THE STATE COURT

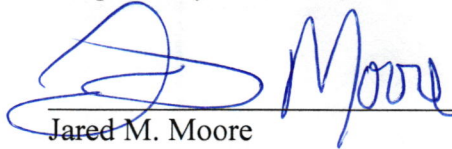
7. In accordance with 28 U.S.C. § 1146(d), this Notice of Removal is also being promptly filed with the 70th Judicial District Court, Ector County, Texas, and served upon Plaintiff's counsel of record.

JURY DEMAND

8. Plaintiff made a jury demand in the state court.

WHEREFORE, Defendant The Charter Oak Fire Insurance Company hereby removes the state court action from the 70th Judicial District Court, Ector County, Texas, to this Court.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Jared M. Moore", is written over a horizontal line.

Jared M. Moore
State Bar No. 24067780
jmoore@cbtd.com
Matthew J. Coolbaugh
State Bar No. 24100160
mcoolbaugh@cbtd.com

OF

COTTON, BLEDSOE, TIGHE & DAWSON, P.C.
P. O. Box 2776
Midland, Texas 79702
(432) 684-5782
(432) 682-3672 Fax

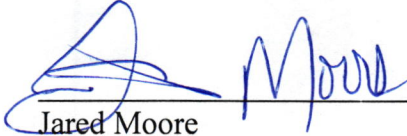
*Attorneys for Defendant
The Charter Oak Fire Insurance Company*

CERTIFICATE OF SERVICE

I certify that on this the 1st day October, 2020, I electronically filed the foregoing notice of removal with the clerk of the court using the CM/ECF system which may send notification of such filing to the following emails, and that a full and complete copy hereof was also sent by counsel for Defendant via electronic mail to:

Kevin B. Miller
Matthew J. Olivarez
LAW OFFICE OF MILLER & BICKLEIN
8207 Callaghan Rd, Ste 250
San Antonio, Texas 78230

Kevin@mblaw.com
Matthew@mblaw.com


Jared Moore

Attachment “1”

FILED FOR RECORD
Cause No.: A-20-09-0925-CV
Ector County - 70th District Court
Ector County, Texas
9/1/2020 5:32 PM
Clarissa Webster
District Clerk
By: Sara Chavez, Deputy

NO. A-20-09-0925-CV

JOHNNY GIVENS	§	IN THE JUDICIAL DISTRICT
	§	
VS.	§	_____ DISTRICT COURT
	§	
THE CHARTER OAK FIRE INSURANCE	§	
COMPANY	§	ECTOR COUNTY, TEXAS

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES. PLAINTIFF, JOHNNY GIVENS, complaining of THE CHARTER OAK FIRE INSURANCE COMPANY, DEFENDANT, and for cause of action would show:

I.

Plaintiff is a resident of Ector County, Texas.

Defendant, THE CHARTER OAK FIRE INSURANCE COMPANY, is an insurance company registered in the State of Texas and may be served with citation by and through their registered agent for service of process Corporation Service Company, 211 East 7th Street, Ste 620, Austin, Texas 78701 or wherever they may be found.

II.

Plaintiffs intends to conduct discovery under level III of Rule 190 of the Texas Rules of Civil Procedure once the parties are able to reach an agreement on a docket control order.

III.

Venue is proper in Ector County, Texas as the majority of the events surrounding and giving rise to the incident made the basis of this suit occurred in Ector County. Further, the insurance policy under which the Plaintiff sues under was purchased by his employer, a company

which is located in Ector Coutny, Texas.

IV.

Plaintiff brings this suit to recover damages for under-insured motorist coverage related to personal injury damages sustained by Plaintiff in a motor vehicle collision in Ector County, Texas that occurred on or about December 28, 2016, which collision was proximately caused by the negligence of a Third Party Defendant Waylan Gene Thompson.

Following the motor vehicle accident and medical treatment of the Plaintiff Givens, suit was filed against the 3rd Party Thompson which subsequently was settled for the minimum limits of Thompson's insurance policy which was \$30,000.00.

Prior to settling the lawsuit with Thompson, the Plaintiff notified the Defendant THE CHARTER OAK FIRE INSRUANCE COMPANY, a subsidiary of Travlrs, of his intent to settle, requested permission to settle and issued demand on the under-insured motorist policy which he was covered under.

Defendant did not accept the demand made by the Plaintiff.

At all times relevant to this suit, the Plaintiff, Johnny Givens, while exercising due care for his own safety was injured by a responsible and negligent 3rd party who pulled out in front of him suddenly and without warning, failing to yield the right of way.

The negligent acts and omissions of the 3rd Party, Thompson, proximately caused a collision between his vehicle and that of the Plaintiff who was unable to avoid colliding into the back of the 3rd Party's vehicle because of how close he was to the intersection from which Thompson entered the road.

V.

At the time and on the occasion in question, the responsible 3rd party Thompson, was negligent of various acts and omissions, which negligence was the proximate cause of the occurrence in question, including but not limited: to failure to maintain a proper lookout, entering the roadway when unsafe, failure to operate a motor vehicle in a safe manner, failure to operate a motor vehicle in a manner which would avoid an accident and failure to yield the right of way.

Further, Plaintiff states that 3rd Party Thompson was not covered by an insurance policy which fully compensated the Plaintiff for his damages. As a result the Plaintiff is entitled to coverage and compensation for her damages under the insurance contract for under-insured motorist coverage maintained and in effect at the time of the collision subject of this suit.

Plaintiff files this suit for under-insured motorist coverage benefits and enforcement of the contract for which the Defendant is currently in breach.

VI.

As a result of the collision above described, Plaintiff suffered personal injuries, causing Plaintiff to incur reasonable and necessary medical expenses, physical pain, mental anguish, disfigurement, and impairment all in the past in the reasonable probability, will continue to suffer same in the future by reason of the nature and severity of the Plaintiff's injuries caused as a result of the Defendant's negligence for which he now sues.

VII.

By reason of the above and foregoing, Plaintiff has been damaged in a sum within the minimum jurisdictional limits of this Court in an amount in excess of \$200,000.00 but less than \$1,000,000.00 which constitutes the limits of the insurance policy under which the Plaintiff

currently sues.

VIII.

Pursuant to Rule 194, Plaintiff requests that Defendant disclose, within fifty (50) days of service of this request, the information or material described in Rule 194.2 (a)-(l).

WHEREFORE, PREMISES CONSIDERED, Plaintiff requests that Defendant be cited to appear and answer herein and that upon a final trial of this cause, Plaintiff recover: judgment against Defendant for Plaintiff's damages as set forth above in an amount within the minimum jurisdictional limits of this court; prejudgment interests on Plaintiff's damages as allowed by law; interest on the judgment at the legal rate; costs of court; and such other and further relief to which Plaintiff may be entitled.

Respectfully submitted,

LAW OFFICES OF MILLER & BICKLEIN
8207 Callaghan Rd, Ste 250
San Antonio, Texas 78230
210.366.2400 (T)
210.366.4791 (F)

By: /s/ KEVIN B. MILLER
KEVIN B. MILLER
Kevin@mblaw.org
STATE BAR NO. 14094500

MATTHEW J. OLIVAREZ
Matthew@mblaw.org
STATE BAR NO. 24088514

ATTORNEYS FOR PLAINTIFF

PLAINTIFFS DEMANDS TRIAL BY JURY.

Attachment “2”



Notice of Service of Process

SLM / ALL
Transmittal Number: 21989067
Date Processed: 09/08/2020

Primary Contact: Sharon Brooks - MS 08-A
The Travelers Companies, Inc.
One Tower Square
Rm 8MS
Hartford, CT 06183-0001

Entity:	The Charter Oak Fire Insurance Company Entity ID Number 2317462
Entity Served:	The Charter Oak Fire Insurance Company
Title of Action:	Johnny Givens vs. The Charter Oak Fire Insurance Company
Matter Name/ID:	Johnny Givens vs. The Charter Oak Fire Insurance Company (10490105)
Document(s) Type:	Citation/Petition
Nature of Action:	Contract
Court/Agency:	Ector County District Court, TX
Case/Reference No:	A-20-09-0925-CV
Jurisdiction Served:	Texas
Date Served on CSC:	09/08/2020
Answer or Appearance Due:	10:00 A.M. on the Monday next following the expiration of 20 days
Originally Served On:	CSC
How Served:	Certified Mail
Sender Information:	Kevin B. Miller 210-366-2400

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC

251 Little Falls Drive, Wilmington, Delaware 19808-1674 (888) 690-2882 | sop@cscglobal.com

Attachment “3”

CAUSE NO. A-20-09-0925-CV

JOHNNY GIVENS,
Plaintiff,

v.

THE CHARTER OAK FIRE
INSURANCE COMPANY,
Defendant.

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IN THE JUDICIAL DISTRICT

70TH DISTRICT COURT

ECTOR COUNTY, TEXAS

DEFENDANT'S ORIGINAL ANSWER

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Defendant The Charter Oak Fire Company in the above-styled and numbered cause, and files its Original Answer to Plaintiff's Original Petition on file herein and would respectfully show the Court as follows:

I.
GENERAL DENIAL

Subject to such stipulations and admissions as may hereafter be made, Defendant asserts a general denial as is authorized by Rule 92 of the Texas Rules of Civil Procedure, and Defendant respectfully requests that Plaintiff be required to prove the charges and allegations against Defendant by a preponderance of the evidence as is required by the Constitution and laws of the State of Texas.

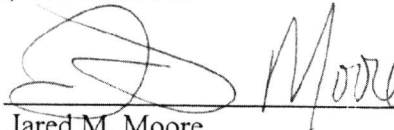
PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendant prays that Plaintiff takes nothing by this suit and that Defendant goes hence without day.

Respectfully submitted,

COTTON, BLEDSOE, TIGHE & DAWSON, P.C.
A Professional Corporation
P. O. Box 2776
Midland, Texas 79702
(432) 684-5782
(432) 682-3672 Fax

By:



Jared M. Moore
State Bar No. 24067780
jmoore@cbtd.com
Matthew J. Coolbaugh
State Bar No. 24100160
mcoolbaugh@cbtd.com

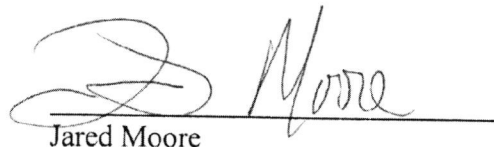
ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I certify that on this the 1st day October, 2020, a true and correct copy of the foregoing document has been forwarded by facsimile, email, regular mail, or certified mail, return receipt requested, to the following party of record:

Kevin B. Miller
Matthew J. Olivarez
LAW OFFICE OF MILLER & BICKLEIN
8207 Callaghan Rd, Ste 250
San Antonio, Texas 78230

Kevin@mblaw.com
Matthew@mblaw.com



Jared Moore